



# BUSINESS *Shield*

## Policy Contract

### 1. DEFINITIONS

- 1.1 "Business" shall mean any business enterprise, whether a sole proprietorship, company, partnership or close corporation which, if required by law applicable in Namibia, is properly registered or licensed to conduct business;
- 1.2 "Debt" shall mean monies owed to the Insured for services rendered or goods sold and delivered and exclude:
- 1.2.1 debt which existed on the effective date;
  - 1.2.2 debt not reported to the Insured in accordance with the provisions of this Policy;
- 1.3 "Debt Collection Proceedings" shall mean legal proceedings that include a Letter of Demand, Summons, Default Judgment and Warrant of Execution;
- 1.4 "Debtor" shall mean a person, natural or legal, who is indebted to the Insured and whose identity is stated in the schedule of insurance;
- 1.5 "Default" shall mean the failure of a Debtor to pay his Debt to the Insured.
- 1.6 "Effective date" shall mean the date upon which the first premium is received in the books of the Insurer. In the event that an arrear premium is received, the Effective Date shall be the date of receipt of the arrear premium on the books of the insurer.
- 1.7 "Event" shall mean any action that forms the basis for a claim under this policy;
- 1.8 "Legal Expenses" shall mean the fees payable to a Labour Consultant or Legal Practitioner for professional services rendered while this Policy is in force and excludes disbursements and travelling expenses;
- 1.9 "Labour Consultant" shall mean a labour consultant appointed by the Insurer;
- 1.10 "Legal Practitioner" shall mean a qualified Legal Practitioner as described by the Legal Practitioners Act No 15 of 1995 as amended or substituted from time to time.
- 1.11 "Namibia" shall mean the Republic of Namibia.
- 1.12 "Policy" shall mean this Policy document as amended from time to time by the Insurer including the schedule and the application form thereto;
- 1.13 "The Insurer" shall mean Trustco Insurance Ltd;
- 1.14 "The Insured" shall mean the business enterprise in whose name this policy is effected;
- 1.15 "Labour Proceedings" shall mean proceedings in terms of the Labour Act 11 of 2007 as amended or substituted, limited to:
- 1.15.1 advice on all labour-related matters affecting the Insured
  - 1.15.2 provision of employment contracts, policies, procedures and codes;
  - 1.15.3 provision of all documents and processes relating to disciplinary hearings;
  - 1.15.4 provision of a presiding officer during disciplinary hearings;
  - 1.15.5 representation during conciliation and arbitration proceedings if approved by the Labour Commissioner;
  - 1.15.6 labour appeals;
- 1.16 "Legal Proceedings" shall mean civil proceedings by or against the Insured in a Civil Court of Law of first instance. Included under Legal Proceedings is an Appeal from the aforementioned Court of first instance subject to the terms and conditions of this policy;

### 2. INDEMNITY TO THE INSURED

In consideration of the Insured having paid the agreed premium to the Insurer and subject to the terms, conditions and exclusions herein, the Insurer undertakes to:

- 2.1 Indemnify the Insured against Legal Expenses incurred in relation to Labour Proceedings and Legal Proceedings in accordance with and limited to the prevailing Trustco Insurance Limited tariffs, terms and conditions;
- 2.2 Pay upon the death of an employee of the Insured, whose particulars appear in the schedule of insurance, a free funeral benefit to the beneficiary of the employee or to the estate of the employee provided that:
  - 2.2.1 When the death of the employee results from HIV/AIDS, Tuberculosis or Pulmonary Pneumonia or other HIV/AIDS-related ailments, the Insurer shall only be obliged to pay the benefits to the beneficiary when the death occurs twelve (12) months after the date on which the employee was added to the schedule of insurance;
  - 2.2.2 The Insurer shall not be liable to indemnify the employee in the event that the illness causing the death of the employee or any of its symptoms manifested itself prior to the date on which the employee was added to the schedule of insurance;
  - 2.2.3 The Insurer shall not be liable to indemnify the employee when the death was caused by suicide;
  - 2.2.4 The onus of proof shall be upon the beneficiary or the executor of the estate to show that any of the exceptions above was not present or did not contribute to the cause of death.
- 2.3 Collect Debt on behalf of the Insured in respect of matters arising from the ordinary course of business of the member including the use of the Legal Shield debt management procedure.

### 3. INDEMNITY TO THE INSURER

The Insurer shall not be liable for any damage caused by any act or advice, negligent or otherwise, by the agent, Labour Consultant, Legal Practitioner or employee appointed by the Insurer. The Insurer, in the event that a claim is referred for action, does not guarantee any expertise in respect of the appointed labour consultant or legal practitioner. The Insurer does not guarantee any decision by any Court, Tribunal or other body in favour of the

Insured.

### 4. TERRITORIAL LIMITS

The Insurer will be liable to indemnify the Insured against legal expenses incurred within the boundaries of Namibia and arising from events arising entirely within the territorial boundaries of Namibia.

### 5. POLICY EXCEPTIONS

Except as otherwise specifically stated, this Policy does not cover matters referred to in clause 2.1 based on or arising from during or out of:

- 5.1 A cause of action that may give rise to a claim which arose prior to the Effective Date of the policy;
- 5.2 Matters in which the Insured does not have:
  - 5.2.1 An interest;
  - 5.2.2 A reasonable prospect of success in the view of the Insurer;
- 5.3 Costs awarded against the Insured in terms of an Order of Court or other body provided for by the Labour Act;
- 5.4 Matters which are reasonably capable of being resolved satisfactorily without representation;
- 5.5 Political activities by the Insured;
- 5.6 Any claim by the Insured against the Insurer or its affiliated companies
- 5.7 Events, conditions or circumstances of general public interest which may affect public interest or society generally
- 5.8 Any activity or act which is calculated to overthrow or influence any state, municipality, tribal or other public authority with force, warlike activity or means of fear bring about any civil commotion, public disorder, riots or public disobedience
- 5.9 Matters based on illegality or malice on the part of the Insured
- 5.10 Any criminal matters instituted against the Insured
- 5.11 Matters with a capital value of less than N\$10,000
- 5.12 Any debt due to the Insured that is less than sixty (60) days in arrears
- 5.13 Any matter instituted by or against the State or any State Owned Enterprise
- 5.14 Any expropriation proceedings
- 5.15 Any matter in which a nulla bona (no attachable assets) return of service is received from the Messenger / Sheriff in respect of a warrant of execution
- 5.16 Civil proceedings are not covered in the event that the gross annual turnover of the business exceeds the limit listed in the Schedule of Insurance;

### 6. PREMIUMS, SCHEDULE OF INSURANCE, PAYMENT OTHER INSURANCES AND DUTIES OF THE INSURED

- 6.1 The following shall be reflected in the Schedule of Insurance:
- 6.1.1 The monthly premium;
  - 6.1.2 Particulars of employees employed by the Insured;
  - 6.1.3 The first amount payable.
  - 6.1.4 The maximum limit of indemnity from time to time.
- 6.2 The Insured shall take all reasonable steps to ensure that any damage in respect of an event is mitigated.
- 6.3 The Insured shall notify the Insurer if the amount of employees exceed the limit ascribed to the category of insurance for which the Insured has applied.

### 7. COMMENCEMENT, DURATION OF INSURANCE AND PAYMENT OF PREMIUMS

- 7.1 The Insurance shall commence on the Effective Date and provided that the Insurer continues to pay the monthly premium, shall be effective until cancelled by the Insurer or the Insured in writing; in which event cover shall cease at 24h00 on the last day of the month for which premiums have been paid. Legal expenses incurred to date of cancellation will be covered by the Insurer where after all liability by the Insurer towards legal expenses will cease.
- 7.2 Premiums are payable monthly in advance before the 1st day of the month for which cover is required. The onus is on the Insured to ensure that the premiums are duly paid.
- 7.3 If arrear premiums are received in the books of the Insured, the Insurer shall have the right to indemnify the Insured or to regard the policy as having been cancelled and to refund the arrear premiums received.
- 7.4 Subject to clause 14, if this policy is cancelled at any time for any reason the Insured shall not be entitled to a refund of premiums paid.
- 7.5 No person or company is authorised to receive premiums from the Insured except on written authority from the Insurer to do so.
- 7.6 The Insurer shall have the right to increase the monthly premium from time to time after notice to that effect has been given.

### 8. CLAIMS PROCEDURE

- 8.1 Within 30 days after the occurrence of an Event, which may give rise to a claim in terms of this policy, the Insured shall advise the Insurer in writing on the prescribed claim form;
- 8.2 A copy of the Business' latest tax return indicating that the gross turnover of the Business is less than N\$3,000,000 per annum;
- 8.3 The Insurer shall have the right to first attempt to settle any dispute or claim relating in any way to the Insured including, but not limited to, negotiation, mediation and/or binding

Signed on behalf of Trustco Insurance Ltd

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Annette Brand  
Head: Trustco Insurance Ltd

arbitration, rather than in a court of law. This arbitration clause shall be mandatory if the litigants are all Insured members of Legal Shield, litigating against one another. The Insured shall be required to actively participate in these processes.

The arbitration shall be held in WINDHOEK except otherwise approved or directed in writing by the Insurer. The arbitrator shall be such competent and independent person identified and appointed by the Insurer or as may be mutually agreed upon between all parties, failure which, the Insurer may request the Chairperson of the Society of Advocates of Namibia to appoint an independent arbitrator whereupon the standard administrative procedures of the Rules of Arbitration of the Republic of Namibia shall apply. The arbitrator's award shall be final and binding, and any party to the arbitration can apply to a court of law to make the arbitral award an order of court, in which case the award may become public.

- 8.4 The Insurer will not be liable to indemnify the Insured unless:
- 8.4.1 The Insurer has issued written confirmation of cover subsequent to a claim being received and;
  - 8.4.2 The Insured continues to pay the monthly premium while the proceedings are in progress;
- 8.5 The Insurer will appoint a Labour Consultant or Legal Practitioner in its sole discretion;

### 9. SETTLEMENT

- 9.1 In the event of proceedings being instituted, the Insured, through the appointed Labour Consultant/Legal Practitioner, shall make reasonable attempts to settle the matter as soon as possible.
- 9.2 The Policy constitutes a cession to the Insured and the right to recover legal costs hereby incurred and disbursed, from an opposing party, vests in the Insurer.

### 10. DOCUMENTS TO BE SUBMITTED TO THE INSURER

- 10.1 The Insured shall be obliged to furnish to the Insurer such documents as may be requested, at no cost to the Insurer.
- 10.2 The Insured hereby grants Power of Attorney to the Insurer to obtain from the Public Authority or third party any document or information pertaining to a claim.

### 11. WHOLE AGREEMENT

- 11.1 The application for insurance shall be the basis of and forms part of this Policy.
- 11.2 The Policy and amendments thereto, the Application and the Schedule of Insurance, shall constitute the sole agreement between the parties.
- 11.3 No contrary representation, or agreement to vary the Policy, shall be of any force or effect unless reduced to writing and signed by someone specifically authorised thereto in writing by the Insurer.

### 12. REPUDIATION OF CLAIMS, CONFLICT AND DISPUTE

- 12.1 In the event of a repudiation by the Insurer of a claim or portion of a claim hereunder, (and after having received a written objection from the Insured within 30 days after such repudiation) the decision shall be reviewed by an appraiser appointed by the Insurer. The appraiser's view will not be binding on the Insurer, but may serve as a basis for a reappraisal of the decision to repudiate.
- 12.2 In the event of the Insured not agreeing with the Insurer's reappraisal, the Insured will notify the Insurer in writing within 30 days from date of repudiation.
- 12.3 Thereafter the matter shall be referred to arbitration by the Insured in terms of the relevant legislation within a period of 60 (sixty) days.

### 13. WAITING PERIOD

There shall be a waiting period of three months in respect of claims as defined under clauses 1.15.4, 1.15.5 and 1.15.6.

### 14. COOLING-OFF PERIOD

In the event that the Insured cancels his/her policy within two months of the application for cover by the Insured and provided that the Insured did not prior to such cancellation submit any claim in terms of the policy, the Insurer shall refund all premiums received from the Insured.

### 15. REACTIVATION

In the event that a similar policy in the name of the policy holder had been cancelled for any reason, an administrative fee equal to one premium shall become payable as a first charge.

### 16. DISCLOSURE OF RISK

The Insured acknowledges that he is obliged to disclose to the Insurer any fact or circumstance which may exist when applying for the policy or which may arise while this policy is valid and which may affect the risk insured. Failure to do so may result in the repudiation of any claim submitted.

### 17. COMMUNICATION

The Insurer is entitled to address any written communication with the Insured in the manner it deems most expedient by way of either mail, facsimile, smart fax, short message service or electronic mail. For purposes of communicating any amendment of the terms and conditions of this policy, the Insured expressly consents to the Insurer notifying the Insured of any such amendment by means of short message service to the mobile telephone number nominated by the Insured from time to time or as reflected in the Insurer's records. Any communication by the Insurer to the Insured by means of short message service to the mobile telephone number nominated by the Insured from time to time or as reflected in the Insurer's records shall be deemed as having been received by the Insured. For this purpose, the Insured acknowledges that it is the Insured's sole and exclusive duty to notify the Insurer of any change of the Insured's contact details.